



**ORDINARY COUNCIL
27 SEPTEMBER 2023**

REPORT TITLE:	Community Infrastructure Levy Charging Schedule Adoption
REPORT OF:	Phil Drane – Director of Place

REPORT SUMMARY

This report sets out the outcomes of the examination of the council's Community Infrastructure Levy (CIL) and seeks to formally approve and publish the Council's CIL Charging Schedule, in accordance with Regulation 25 of the CIL Regulations 2010 (as amended). The report advises that, subject to council adoption on 27 September 2023, the Brentwood CIL Charging Schedule will take effect on the 15 January 2024. This date is informed by an ongoing programme of work to set up all necessary guidance, administrative and financial systems and processes for CIL implementation.

The report summarises the preparation process that has been required to produce the CIL Charging Schedule and the stages of consultation and formal examination that have been involved. The report sets out how formal adoption by the council is now required in order to commence and implement CIL.

Once CIL is brought into effect, the Council will become a 'CIL Charging Authority' and 'CIL Collecting Authority'. Moving forward it will be important for Members to approve the governance arrangements for the prioritisation and spending of CIL receipts. This report provides Members with an update as to the consideration of governance arrangements and a commitment for this to be the subject of a future committee report within the next 12 months.

RECOMMENDATIONS

- R1. Adopt the Community Infrastructure Levy Charging Schedule (Appendix A), with an implementation date of 15 January 2024.**
- R2. Adopt the Instalment Policy (Appendix B), with an implementation date of 15 January 2024.**

- R3. Delegate authority to the Director of Place, in consultation with the Chief Executive and Leader of the Council, any necessary further minor editorial changes to the Charging Schedule or Instalment Policy and a change to the implementation date if necessary.**
- R4. Approve that governance options and arrangements for the priorities and spending of CIL receipts be brought to committee in the next 12 months.**

SUPPORTING INFORMATION

1.0 REASON FOR RECOMMENDATIONS

- 1.1 The council has identified a corporate priority to adopt a CIL for the borough. CIL will help secure infrastructure investment alongside new development identified in the council's local development plan. Resource to progress CIL to submission has been prioritised following local plan adoption in March 2022.
- 1.2 On 9 March 2022, the Policy, Resources and Economic Development Committee (Item 337) were presented with an overview of CIL, outlining the need for a levy to support the provision of new infrastructure in the borough, the types of developments which would be liable to pay the levy, how the levy could be used alongside other infrastructure funding mechanisms, the types of projects which could be funded through CIL, how the levy would be administered, and the potential infrastructure funding which could be derived from introducing CIL.
- 1.3 Through the recommendations of the report, the committee approved further work to be undertaken to support the production of a draft CIL Charging Schedule for the borough, in addition to progressing the consideration of options for a CIL panel to determine priorities for the spending of CIL and the creation of a CIL Officer role to lead the administration of CIL within the council.
- 1.4 On 3 October 2022 the Policy, Resources and Economic Development Committee (Item 178) were presented with the outcomes from the 2022 CIL Viability Assessment, including proposed CIL rates for the area. Through the recommendations of the report, the committee approved the draft CIL

Charging Schedule and supporting consultation material for Regulation 16 public consultation.

- 1.5 Consultation on the draft CIL Charging Schedule took place for four weeks, starting on Wednesday 12 October and ending on Wednesday 9 November 2022. Following consultation, the outcomes and an updated draft Charging Schedule were reported to the Policy, Resources and Economic Development Committee (Item 385) on 8 March 2023. Through the recommendations of the report, the committee approved (with full cross-party political support) to submit the updated draft Charging Schedule for examination in accordance with the CIL Regulations 2010 (as amended) and the Planning Act 2008.
- 1.6 The preparation of CIL was part funded by Essex County Council. They, like Brentwood Borough Council, are keen to ensure that infrastructure is delivered and funding is secured by, amongst other means, CIL. Brentwood was one of two pilots in Essex, whereby the county council part funded the preparation work.

CIL Examination

- 1.7 The purpose of the examination of the CIL Charging Schedule was to ensure that the proposed Charging Schedule sets an appropriate balance between helping to fund necessary new infrastructure in the area, and the potential effects of the charge on the economic viability of development across the borough. This test is set out in the CIL Regulations 2012 (as amended), with additional guidance set out in the associated national Planning Practice Guidance.
- 1.8 The examination of CIL commenced in March 2023, upon submission of the draft Charging Schedule. On 11 July 2023, a public hearing session took place in the Council Chamber at Brentwood Town Hall, as part of the Examination of the Brentwood Borough CIL Charging Schedule. The hearing session was live streamed via the council's YouTube channel, to enable anyone interested to follow proceedings online. In its opening statement the council emphasised the importance of securing CIL as a key priority, driven by the need to ensure that much needed infrastructure and other facilities to support future development are provided in a timely fashion. The hearing session largely focused on legal compliance and interrogation of the viability evidence.
- 1.9 Receipt of the Inspector's Report (provided in full at Appendix C) on the 21 August marked the closure of the CIL examination. The Inspector's Report concludes: *"that the Brentwood Community Infrastructure Levy Draft Charging Schedule provides an appropriate basis for the collection of the levy in the*

borough. The Council has sufficient evidence to support the Charging Schedule and can show that the levy is set at a level that will not put the overall delivery of development in the area at risk". It recommends, "that the Charging Schedule should be approved in its published form without changes".

- 1.10 Given the findings of the Inspector's Report, there are no reasons why the council should not proceed to formal adoption of its CIL Charging Schedule (provided in full at Appendix A). In accordance with the CIL Regulations 2010 (as amended), Regulation 25, the Council has prepared an Adoption Statement for the Charging Schedule (as set out at Appendix D).

Instalments policy

- 1.11 As part of the consultation on the Draft Charging Schedule, a proposed Instalment Policy was set out. Following this Regulation 16 consultation, amendments were made to the proposed ranges within the instalments to ensure there were no gaps within the ranges. The instalments policy within the Draft CIL Charging Schedule (February 2023), submitted for Examination is provided below:

Overall CIL liability	Payment Instalments
£20,000 or less	Payment in full within 240 days
£20,000 - £99,999	50% paid within 360 days Further 50% paid within 540 days
£100,000 - £499,999	10% paid within 270 days Further 15% paid within 540 days Further 25% paid within 720 days Remaining 50% paid within 900 days
£500,000 or more	Agreement of project specific payment schedule

- 1.12 As part of the Examination, the Examiner considered the existence of an instalment policy as a material consideration in assessing the viability of the proposed levy. He determined that the number, amount, and timing of payments would assist the viability of the types of development tested. Therefore, it is necessary for the council to have an instalment policy to ensure the viability of development by providing a degree of flexibility around cash flow.
- 1.13 Therefore, there is a need to achieve a balance between ensuring the economic viability of development by avoiding unnecessary borrowing costs

and ensuring that infrastructure contributions are secured in a timely manner and in full.

- 1.14 The CIL Regulations require full payment of any contribution in full within 60-days, unless there is an instalment policy in place, increasing the cost of development at an expensive time in the development process when the ground works are normally being carried out. The introduction of an instalment policy spreads that cost, reducing the borrowing burden on the developer and improving development viability.
- 1.15 However, it is recognised that instalment policies should not be too generous. The CIL Regulations allow for Warning Notices and Stop Notices to be issued in the event of non-payment. These are only effective if development is ongoing. It is therefore appropriate that contributions are secured during the development period.
- 1.16 Due to the relatively high rate of CIL for residential development, it is possible for relatively small schemes such as a scheme of 5-10 houses to have a CIL charge of over £100,000. However, it is also possible for such a scheme to be completed within 2-years (730 days). The current proposed instalment policy would be ineffective in securing the required contribution whilst the development is under construction. Furthermore, it exposes a high proportion (50%) of the required levy to risk of non-payment due to the proportion due at 900-days.

Revised Instalments Policy

- 1.17 A revised instalment policy is therefore proposed (as set out in Appendix B) which shortens the overall payment period for CIL, enabling the council to take timely enforcement action in the event of non-payment. It does however recognise the need to ensure viability of development by spreading the cost of CIL over a reasonable period.
- 1.18 The revised instalment policy requires a proportion of the CIL requirement to be paid within 60 days of commencement of the development, as required by the regulations, and then regular payments throughout the delivery of a development. The longest repayment period for those liable to the most CIL is now 2 years (730 days) for smaller schemes, which means most developments are unlikely to be completed before their final CIL payment is due, allowing for enforcement action in the event of non-payment.
- 1.19 Following officer engagement with best practice learnt from Castle Point Borough Council, it is additionally proposed that a caveat is added to the instalment policy table to help avoid situations of non-payment which states

that: *“Any and all outstanding instalments become due immediately on completion of the final unit irrespective of the schedule shown in the table above.”*

- 1.20 Regulation 69B of the CIL Regulations allows the council to put in place an instalment policy at any time. It is allowed to alter that instalment policy as it wishes but must allow 28-days between an instalment policy coming into effect and a replacement of it.
- 1.21 The council is required to publish its instalment policy along with its commencement date on its website.

Implementation of CIL

- 1.22 CIL can only be charged on sites which are granted planning permission after the Charging Schedule becomes effective. The effective date is the date on which the Levy comes into effect. Any CIL liable applications decided from that date will be issued a CIL Liability Notice. The charge is payable upon commencement of the development. All customers of the Council will therefore need to be aware of the requirements of the CIL Regulations 2010 (as amended), relevant to their proposed development. A lack of understanding and clarity regarding CIL processes could result in customers being required to pay surcharges or to pay the full CIL amount in full. Therefore time is required to ensure that the introduction of CIL is clear and well explained in advance of it coming into effect.
- 1.23 Consideration must be given to the following points in setting a realistic effective date:
 - a) Timescales for the procurement, introduction and bedding in of a suitable supporting software system is a key dependant.
 - b) Officer resource availability to lead the setting up and administration of CIL.
 - c) The need to prepare a consultation strategy – social media, agent forum, website updates, setting up online payment systems/agreeing invoicing processes.
 - d) Determine the administration process.
 - e) Training and providing updates to departments across the authority including Planning, Finance and Land Charges.

f) Update Local Validation List to require CIL Form 1.

- 1.24 Given the above, and in line with recent experience from other Planning Authorities setting CIL implementation timeframes (such as Castle Point Borough Council, East Suffolk Council and Vale of White Horse District Council), it is considered realistic to allow between 3 to 4 months to ensure all systems are up and running efficiently. A shorter timeframe would risk a rush to prepare the public, and agents for the introduction of CIL. This can result in a loss in public trust and errors being made which could result in unnecessary appeals and other complications.
- 1.25 Officers consider that an implementation date of 15 January 2024 will be achievable, taking into account the holiday period in December/January. However, it is recommended in this report (R3) that the Director of Place, in consultation with the Chief Executive and Leader of the Council is given the power to alter this implementation date should unexpected complications arise.

Governance arrangements

- 1.26 For clarity, Members are not being asked to consider the governance options for spending CIL receipts at present. This is because a meaningful amount of CIL receipts are not anticipated for some considerable time.
- 1.27 Assuming Members approve the adoption and implementation of CIL as set out within the recommendation (R1), developments will be liable for CIL from the 15 January 2024. However, as set out previously, CIL only becomes payable upon commencement of development, which can take up to three years.
- 1.28 There will be a sufficient lag between implementation of CIL charging processes and the receipt of CIL monies to identify strong governance arrangements which will ensure that spend is effective and efficient in delivering infrastructure that responds to the council's priorities. It is recommended in this report (R4) that this topic be the subject of a future report to Members in the next 12 months.
- 1.29 As set out within the officer's report to the Policy, Resources and Economic Development Committee on 9 March 2022 (Item 337), the council agreed that Essex County Council fund £60,000 towards the cost of preparing the CIL in return for access to the first £60,000 worth of CIL receipts for a county-led project or projects in Brentwood borough.

- 1.30 Through the recommendations of the report on 9 March 2022, the committee approved further work be considered and presented to a future committee for the creation of a CIL Officer role to lead the administration and negotiation of developer contributions within the council. By way of updating Members, this is being carefully considered through the OneTeam service review and will be reported to Members in accordance with this process.

2.0 BACKGROUND INFORMATION

- 2.1 CIL is a non-negotiable charge that local authorities can levy on new development. The charge must be set out in an adopted charging schedule and may differ for different types of development. The charge is set on a £/sqm basis and can be levied for a single dwelling unit or for 100sqm net additional floorspace and over. There are certain exemptions from CIL (which are clearly set out in CIL Regulations) and these include affordable housing, self-build housing, residential extensions, annexes and development by charities. However, exemptions and relief from CIL require prospective developers to make an application to the Council, in accordance with the CIL Regulations 2010 (as amended).
- 2.2 Following the examination of the Brentwood Borough Local Development Plan 2016-2033, the council has been in a position to progress the production of a CIL Charging Schedule. To support the production of the local plan the council produced the Brentwood Infrastructure Delivery Plan (IDP), which sets out the key infrastructure projects required in the borough and identified how developer contributions and other funding sources could be used to support the delivery of new infrastructure projects. The IDP highlights the need for additional sources of funding to support the delivery of new infrastructure in the area. CIL provides a mechanism to obtain additional infrastructure funding, alongside other funding such as Section 106 agreements (S106).

How the levy works alongside Section 106 contributions

- 2.3 In September 2019, the restrictions on using five or more S106 contributions to fund a single infrastructure project was lifted, and greater flexibility was provided in relation to how CIL funding could be used alongside S106 contributions. Charging authorities can now use both CIL and S106 contributions to fund the same infrastructure item.
- 2.4 The IDP sets out the key infrastructure projects required in the borough, and identifies the use of S106 funding sources to assist in the delivery of a large proportion of identified new infrastructure projects. It is likely that essential infrastructure items which are directly related to supporting the delivery of new development proposals will continue to be funded through S106 agreements.

The use of this approach has been assessed within the Viability Assessment (2018) and the updated 2022 Viability Assessment, to ensure that strategic sites remain viable with the imposition of both S106 requirements and a CIL charge.

- 2.5 The CIL will be used in combination with S106 agreements to obtain additional funds for a wide range of community infrastructure projects throughout the borough, and to obtain infrastructure funding from smaller developments where S106 agreements may not usually be produced.

How the funds are distributed

- 2.6 Brentwood Borough Council is the relevant 'charging authority', and it is the responsibility of the charging authority to collect and distribute all CIL funds. The council may retain up to 5% of CIL receipts to cover the costs of administering CIL.
- 2.7 In the first instance, the council must pass up to 15% of receipts arising in an area to the relevant parish council for any homes built in that parish. This 15% is capped. The cap was set at £100 per dwelling in 2013 but has been increased since then due to indexation. Where there is a 'made' Neighbourhood Plan covering their parish, the CIL received is 25% of the amount raised, with no cap. In those areas where there is no parish council, then the same level of funding per dwelling should be spent specifically on projects in the area local to sites, e.g. at the ward level (this is referred to as the 'neighbourhood portion').
- 2.8 Having set aside any administrative costs and the local element of the receipt, the council can determine how funds are distributed between organisations and projects. In accordance with the recommendation of this report (R4) it is proposed options for the spending of CIL receipts and associated governance be brought back to committee in the next 12 months.
- 2.9 Funding obtained through the levy must be used towards infrastructure which supports growth in the area and should be used based on the needs for new and improved infrastructure in the borough.
- 2.10 It is the Council's responsibility to report on CIL income each year through the Infrastructure Funding Statement. This must outline the extent of CIL funds which have been received, how received CIL funds are being used, and how future CIL funds are proposed to be used in the future.

Indexation

- 2.11 CIL Charging Authorities are required to apply an annually updated index of inflation, meaning CIL charges are index linked and will change annually on 1 January in accordance with the RICS Community Infrastructure Levy (CIL) Index, which is the index specified by the CIL Regulations.

3.0 OTHER OPTIONS CONSIDERED

- 3.1 The council could decide not to bring the Brentwood CIL Charging Schedule into effect. However, this would mean the council not being able to introduce CIL rates in order to contribute towards plugging the significant infrastructure funding gap that has been identified in the borough. This would not align with the council's corporate priority to implement CIL nor the overriding strategy for growth set out in the local plan.

4.0 RELEVANT RISKS

- 4.1 As due process has been followed (as set out in the CIL Regulations 2010, as amended) and the Draft Charging Schedule has been assessed by an independent Examiner, any risk of a legal challenge following the council's adoption and implementation of the Charging Schedule is limited.
- 4.2 Only applications decided from the implementation date (recommended to be the 15 January 2024) are liable to pay CIL. Therefore, delays in implementation will see the level of CIL receipt reduced. This has implications for the funding of local infrastructure projects.

5.0 ENGAGEMENT/CONSULTATION

- 5.1 Consultation on the draft CIL Charging Schedule took place for four weeks, starting on Wednesday 12 October and ending on Wednesday 9 November 2022. Consultees were asked to respond to eight consultation questions regarding the CIL Viability Assessment, the proposed CIL rates within the Draft Charging Schedule, the approach to supporting the viability of new development in the borough, the draft Instalments Policy, and the provision of discretionary relief.
- 5.2 The consultation was promoted on the council's website, social media platforms (Twitter, LinkedIn), and the Brentwood Gazette informing residents of the consultation and how to obtain further information. A press release was published on the council's website alongside the addition of a webpage dedicated to the CIL Draft Charging Schedule consultation. In accordance with the Regulations, the council consulted with individuals, statutory consultation bodies, local authorities, developers, businesses and other organisations on the council's consultation database. In addition to the online

publications, copies of the CIL Draft Charging Schedule and associated evidence base documents and consultation material were made physically available at the Town Hall and libraries for members of the public to view.

- 5.3 The review of the consultation comments identified the need to make modifications to the Draft CIL Charging Schedule. An updated Draft CIL Charging Schedule was therefore submitted to the Planning Inspectorate for independent examination in accordance with the Community Infrastructure Levy Regulations 2010 (as amended) and the Planning Act 2008.

6.0 FINANCIAL IMPLICATIONS

Name & Title: Tim Willis, Director – Resources (Section 151 Officer)

Tel & Email: 01277 312500 / tim.willis@brentwood.rochford.gov.uk

- 6.1 **Potential Income:** It is anticipated that CIL could raise in the order of £27.5m towards infrastructure funding in the borough, this is based on the contributions that could be made by allocated sites within the local plan that have yet to receive planning permission, it does not include an estimate for windfall development. It should be noted there are a number of other assumptions and caveats that have had to be applied when calculating this figure (including but not limited to average dwelling sizes, development type, development quantum), therefore this should be treated as an indicative estimate of CIL contributions. Final future CIL contributions will vary depending on the final approved development mix and designs.
- 6.2 It should however be noted that CIL becomes liable on those developments granted after the implementation of CIL, and only at commencement. Only around 10% of developments commence within one year of permission being granted. Most commence within two to three years. There will therefore be a lag in terms of the receipts received in the first few years.
- 6.3 **Cost to date:** The council has an agreement with Essex County Council to fund £60,000 towards the cost of preparing the levy in return for them being able to access the first £60,000 worth of CIL receipts for a county led project or projects in Brentwood. The CIL Regulations allow for the remaining costs for preparing the CIL, of the order of £50,000, to be recovered from CIL income in later years. Therefore, whilst the preparation of CIL carried a cost, it will be cost neutral to the council overall if it chooses to recover the investment.
- 6.4 **Cost of Implementation:** Separately, there is a cost associated with implementing and managing CIL. Experience from other authorities indicates that this could require at least one dedicated CIL officer to administer the levy and procurement of a suitable supporting software system/database. It is

estimated that the cost of an officer would be approximately £40,000 per annum (not including pension contributions etc). Software systems could cost around £30,000 for set-up and around £15,000 per annum thereafter, although this is liable to change and would need to be procured in line with the council's Procurement Strategy. Funds will need to be confirmed and agreed within a future budget, although charging authorities can utilise funds from the levy to recover the costs of administering the levy, with the regulations permitting use of up to 5% of their total receipts on administrative expenses.

7.0 LEGAL/GOVERNANCE IMPLICATIONS

Name & Title: Claire Mayhew, Acting Joint Director – People & Governance (Monitoring Officer)

Tel & Email: 01277 312500 / claire.mayhew@brentwood.rochford.gov.uk

- 7.1 The preparation and implementation of CIL is governed by the CIL Regulations. The requirements of these regulations must be followed to prevent legal challenges to the council.
- 7.2 Following the adoption of a CIL in an area, there is a legal requirement on a developer to pay the levy for liable development. The adoption of a CIL could reduce the use of Section 106 agreements in the area. Arrangements will need to be put in place in respect of the transfer and use of CIL funds to third parties.
- 7.3 There will be a sufficient lag between implementation and the receipt of monies to identify strong governance arrangements which will ensure that CIL spend is effective and efficient in delivering infrastructure that responds to the council's priorities.

8.0 EQUALITY & HEALTH IMPLICATIONS

Name & Title: Kim Anderson, Corporate Manager - Communities, Leisure and Health

Tel & Email: 01277 312500 / kim.anderson@brentwood.gov.uk

- 8.1 The Public Sector Equality Duty applies to the council when it makes decisions. The duty requires us to have regard to the need to:
- a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - b) Advance equality of opportunity between people who share a protected characteristic and those who do not.

- c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 8.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for b) or c), although it is relevant for a).
- 8.3 The proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

9.0 ECONOMIC IMPLICATIONS

Name & Title: Phil Drane, Director - Place

Tel & Email 01277 312500 / phil.drane@brentwood.rochford.gov.uk

- 9.1 The production of a CIL will enable the council to require mandatory financial contributions from various forms of development to help fund supporting infrastructure. Infrastructure investment will help support and grow the local economy.
- 9.2 Delays in adopting CIL could result in a lack of funding, and therefore a failure to deliver new infrastructure projects in the borough. Ideally, the council would seek to ensure a CIL is in place as soon as possible to maximise the receipts from local plan allocated sites, many of which are coming forward in early years of the plan period. Conversely, it should be noted that current and future applicants may be feel aggrieved at the additional burden of CIL payment should their development qualify, although the council's intention to introduce CIL has been public for several years. It may be claimed that such development is negatively impacted from a viability standpoint and thereby reduce local economic output if works are delayed or stopped, for example.

REPORT AUTHOR:

Name: Camilla Carruthers

Title: Senior Policy Planner

Phone: 01277 312652

Email: camilla.carruthers@brentwood.gov.uk

APPENDICES

- Appendix A: Brentwood Borough Council CIL Charging Schedule
- Appendix B: Brentwood Borough Council CIL Instalment Policy

- Appendix C: Brentwood Borough Council CIL Charging Schedule Examination – Inspector’s Final Report, August 2023
- Appendix D: Brentwood Borough Council CIL Charging Schedule Adoption Statement, September 2023

BACKGROUND PAPERS

None

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Policy, Resources & Economic Development Committee: Item 385, Community Infrastructure Levy Submission	8 March 2023
Policy, Resources & Economic Development Committee: Item 178, Community Infrastructure Levy Draft Charging Schedule Consultation	3 October 2022
Policy, Resources & Economic Development Committee: Item 337, Community Infrastructure Levy Update	9 March 2022